IN THE HIGH COURT OF BOMBAY AT GOA
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CRIMINAL MISCELLANEOUS APPLICATION NO. 138 OF 2002

Nina D'Souza, presently in
Central Jail, Aguada. ... Applicant.

Versus

STATE of Goa through
Public Prosecutor, Panaji, Goa. ... Respondent.

Shri A. D. Bhobe, Amicus Curiae, for the applicant.

Ms. W. Coutinho, Addl. Public Prosecutor for the State.

CORAM: P. V. KAKADE, J.

DATE: 1st November, 2002.

ORAL ORDER

This application under Section 439 of the Code of Criminal Procedure is filed by the accused who is involved in an offence under Section 302 read with Section 34 of the Indian Penal Code alongwith other accused person in connection with Mapusa Police Station Crime No.86/2002. She is accused no.2 in Sessions Case no.28/2002, which is in progress before the Sessions Court, Panaji. She was arrested by the Mapusa Police in connection with the said offence on 4th April, 2002 alongwith accused no.1, who is said to be her boyfriend and since then she is in custody.

It is submitted on behalf of the applicant that she moved two bail applications before the Sessions Court, Panaji, but those applications were rejected. According to her, she is the mother of a five year old son and there is nobody to look after the child, except for her aged parents, who have no financial support from anybody. She is the only

daughter of her parents and was maintaining the family by doing private service. Since the time of her arrest, there is no income for their maintenance. According to her, her mother is a heart patient and requires regular medical attendance and her father is unable to take up any job to earn livelihood.

2. It is the case of the Police outlined in their return that the applicant, alongwith accused no.1 have committed murder of one Peter D'Souza, aged 50 years, with dandas and caused grievous head injuries, as a result of which he succumbed to the same. According to the Investigating Officer, the trial has begun and the next date of hearing is fixed on 2nd November, 2002. It is submitted by the learned Additional Public Prosecutor that there is prima facie evidence on record to show involvement of the applicant in the said crime and therefore, she opposes the bail application moved by the applicant. It is also submitted on behalf of the State that there is one eye-witness to the incident.

3. I have perused the statement of the said eye-witness Shri Indrakant Shriram Sawant, who appears to have stated in his statement that when he came out of the house after hearing the noise, he saw the applicant and accused no.1 with dandas in their hands and the said accused no.1, i.e.boyfriend of the present applicant, was hitting

with danda on the legs of Peter D'Souza, who had fallen on the ground near the closed house of one Benny. In other words, it is true that the State return shows that the injury suffered by the deceased was on the head and, apparently, it was caused due to the use of danda, which resulted in the death of the deceased.

However, at this stage, the dominant consideration in this case would be if the applicant would be available for the on-going trial against her and whether she would tamper with the evidence on record. Taking into account all the relevant circumstances, it is quite doubtful that the applicant with a four to five year old son, would elope anywhere abandoning her old parents only to avoid the trial in this case. It is also unlikely that she would tamper with the evidence, because firstly she is a poor lady and would not be able to win over the witnesses with money power, nor can she be of any threat to the witnesses, specially when the alleged boyfriend is still in jail. The further relevant consideration would also be the fact that she has old parents as well as her child to look after and, therefore, when it is seen that the trial is likely to take sometime to be concluded, in view of the situation at hand, I am of the view that this is a fit case to grant bail to the applicant, with certain conditions.

4. Hence, the application is allowed. The

applicant shall be released on bail on furnishing security for the amount of Rs.5,000/- (rupees five thousand only) with one surety and P.R. for the like amount to the satisfaction of the trial Judge and on the following conditions:-

(i) that she shall not tamper with the evidence in any manner whatsoever; and

(ii) that she shall report to the Mapusa Police Station on every Monday at 10 a.m. till the trial is over.

P. V. KAKADE, J.

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